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SENATE BILL 369

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Phil A. Griego

AN ACT

RELATING TO UTILITIES; PROVIDING FOR RULES ON EX PARTE COMMUNICATIONS WITH ADVISORY STAFF FOR THE PUBLIC REGULATION COMMISSION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 8-8-17 NMSA 1978 (being Laws 1998, Chapter 108, Section 17, as amended) is amended to read:

"8-8-17. EX PARTE COMMUNICATIONS.--

A. A commissioner shall not initiate, permit or consider a communication directly or indirectly with a party or his representative outside the presence of the other parties concerning a pending rulemaking after the record has been closed or a pending adjudication.

B. A hearing examiner shall not initiate, permit or consider a communication directly or indirectly with a party or

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1 his representative outside the presence of the other parties
2 concerning a pending rulemaking or adjudication.

3 C. Notwithstanding the provisions of Subsections A
4 and B of this section, the following ex parte communications
5 are permitted:

6 (1) where circumstances require, ex parte
7 communications for procedural or administrative purposes or
8 emergencies that do not deal with substantive matters or issues
9 on the merits are allowed if the commissioner or hearing
10 examiner reasonably believes that no party will gain an
11 advantage as a result of the ex parte communication and the
12 commissioner or hearing examiner makes provision to promptly
13 notify all other parties of the substance of the ex parte
14 communication;

15 (2) a commissioner may consult with another
16 commissioner or with advisory staff whose function is to advise
17 the commission in carrying out the commissioner's rulemaking or
18 adjudicative responsibilities;

19 (3) a hearing examiner may consult with the
20 commission's advisory staff;

21 (4) a commissioner or hearing examiner may
22 obtain the advice of a nonparty expert on an issue raised in
23 the rulemaking or adjudication if the commissioner or hearing
24 examiner gives notice to the parties of the person consulted
25 and the substance of the advice and affords the parties

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1 reasonable opportunity to respond; and

2 (5) ~~[pursuant to the public regulation~~
3 ~~commission's rulemaking authority]~~ a party to a proceeding may
4 consult with the commission's advisory staff. By July 1, 2004,
5 the commission shall establish rules that allow a party to a
6 proceeding to consult directly with any member of the
7 commission's advisory staff on matters that are before the
8 commission. The rules shall ensure open access for all parties
9 to discuss matters with the advisory staff before, during and
10 after such matters being heard by the commission and shall
11 direct the advisory staff on how to present a fair and balanced
12 view of all interested parties of a proceeding to
13 commissioners.

14 D. A commissioner or hearing examiner who receives
15 or who makes or knowingly causes to be made a communication
16 prohibited by this section shall disclose it to all parties and
17 give other parties an opportunity to respond.

18 E. Upon receipt of a communication knowingly made
19 or caused to be made by a party to a commissioner or hearing
20 examiner in violation of this section, the commissioner or
21 hearing examiner may, to the extent consistent with the
22 interests of justice and the policy of the underlying
23 statutes, require the party to show cause why his claim or
24 interest in the proceeding should not be dismissed, denied,
25 disregarded or otherwise adversely affected on account of the

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violation of this section."

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